

Doc. # 5181A
ADOPTED
5/25/89

DEVELOPMENT IMPACT PROJECT AGREEMENT
[Including Provisions for a Jobs Contribution Grant]

for

45 PROVINCE STREET

This Agreement is made as of May __, 1989 by and between the Boston Redevelopment Authority, a body politic and corporate established pursuant to Chapter 652 of the Acts of 1960, as amended on its own behalf and as agent for the Neighborhood Housing Trust, a Massachusetts public charitable trust established by Declaration of Trust dated November 18, 1985 and pursuant to Chapter 371 of the Acts of 1987 and the Neighborhood Jobs Trust, a Massachusetts public charitable trust established by Declaration of Trust dated November 19, 1985 and pursuant to Chapter 371 of the Acts of 1987 (the "Authority"), and Robert Epstein, David Epstein and John R. Svenson as Trustees of The Province Street Development Trust under Declaration of Trust dated July 17, 1987, recorded with the Suffolk Registry of Deeds at Book __, Page __ and registered with the Suffolk Registry District of the Land Court as Document No. 427915 (the "Applicant"), an affiliate of The Abbey Group, with a principal place of business c/o The Abbey Group, 575 Boylston Street, Boston, Massachusetts 02116.

WHEREAS, the Applicant proposes to construct a 13-story office building with ground floor retail and service use and parking on seven below grade levels for approximately 380 vehicles if self-parking is utilized, or for 440 vehicles if attendant parking is utilized, containing approximately 164,143 square feet of gross floor area as defined in the Boston Zoning Code (the "Code"), of which approximately 148,289 square feet will be dedicated to first class office use, 4,000 square feet will be dedicated to use as a Day-Care Center, as defined in Appendix B to Article 38 of the Code, and the balance of approximately 11,854 to first floor and mezzanine retail stores (the "Project");

WHEREAS, the Project site is comprised of approximately 13,881 square feet of land with the buildings and other improvements thereon now known and numbered at 5-47 Province Street, bounded by Province Street, Bosworth Street and Chapman Place and the office building numbered at 44 School Street and sometimes referred to as the Parker House Office Building, together with certain additional subsurface areas, such site being more particularly described in Exhibit A annexed hereto and incorporated herein by this reference and in the Plan, as hereinafter defined, (the "Project Site");

WHEREAS, the Applicant recognizes that the construction of the Project may have an indirect impact on the costs of housing in the City of Boston (the "City");

Parker House in which portions of the parking garage will be located; and

D. The acquisition from the owner of the Marliave Restaurant of an easement in those portions of Bosworth Street owned by the Marliave Restaurant to authorize the construction and maintenance by the Applicant certain utility lines and of an urban park in that portion of Bosworth Street lying between Chapman Place and Province Street which is a private way open to public use.

Location and Appearance of Structures, Open Spaces, and Landscaping: A detailed verbal, pictorial and plan description of the development's location and current appearance and of the appearance of the proposed office improvements is contained in a document entitled "Final Project Impact Report, 45 Province Street" dated May 15, 1989 (the "FPIR"), previously submitted by the Applicant to the Authority pursuant to Article 31 of the Code, which FPIR is hereby incorporated in this Development Impact Project Plan by this reference. A list of schematic drawings depicting the 45 Province Street development is attached hereto as Exhibit B-2 and incorporated herein by this reference.

As set forth in greater detail in the FPIR, the Applicant's Project includes a significant improvement to the open space adjacent to the Project. The Project includes the restoration of the so-called Province House Steps leading from Province Street to Bosworth Street to their original configuration, and the creation of a urban park in the portion Bosworth Street lying between the top of the Province House Steps and the intersection with Chapman Place. The Province House park will feature brick paving, shade trees, and street furniture.

General Description of Development and Uses: 45 Province Street will consist of a 13-story office building with ground floor retail and service use and parking on seven below grade levels for approximately 380 vehicles if self-parking is utilized, or for 440 vehicles if attendant parking is utilized. The 45 Province Street office building will contain approximately 164,143 square feet of gross floor area as defined in the Boston Zoning Code (the "Code"), of which approximately 148,289 square feet will be dedicated to first class office use, 4,000 square feet will be dedicated to use as a Day-Care Center, as defined in Appendix B to Article 38 of the Code, and 11,854 to retail stores.

The below grade parking will consist of 160 spaces for accessory parking for the office and retail uses in 45 Province Street, and up to 280 spaces to be operated as a public parking garage.

A list of allowed and conditional uses of the Project site is attached hereto as Exhibit B-3 and incorporated herein by this reference.

Estimated Construction Time: Demolition of existing structures will begin and should be completed in the last quarter of 1989. Construction of new improvements is scheduled to begin in the first quarter of 1990, with completion of construction anticipated in the third quarter of 1991. A more detailed construction schedule is contained in the FPIR.

Projected Number of Employees: It is estimated that construction of 45 Province Street will create between 300-400 construction jobs over the two years of the construction period. The Developer will enter into a Boston Residents Construction Employment Plan with the Mayor's Office of Jobs and Community Services and the Boston Employment Commission detailing the steps to be taken by Developer and its contractor to achieve compliance with the Boston Employment Commission Ordinance standards for construction jobs for Boston residents, minorities, and women. After completion it is estimated that the 45 Province Street development will house approximately 38 retail and 588 office permanent employees. The Applicant agrees to become a signatory to a Memorandum of Understanding establishing the Boston for Boston initiative to enhance the availability of employment opportunities created in the 45 Province Street development for Boston residents.

Development Impact Project Contribution/Jobs Contribution Grant: As required under Section 26A-3 of Article 26A the Code, Applicant will enter into an Agreement with the Authority to make a Development Impact Project Contribution. Subject to the approval of the Neighborhood Housing Trust on or before the date of issuance of a building permit authorizing construction of the Project, the Applicant elects to create or to contribute to the creation of housing units for occupancy exclusively by low and moderate income residents of the City by the contribution to the Neighborhood Housing Trust in a single installment, which shall be due and payable on the date of commencement of substantial construction of the Project, in an amount equal to the Net Present Value, as defined in and calculated in accordance with the Authority's Housing Creation Regulations as in effect on the date hereof, of the Housing Contribution Grant which would otherwise be paid in seven (7) equal annual installments, discounted to represent the present value of such seven (7) equal annual installments if paid in a single installment on the Housing Payment Date. Such Net Present Value shall be paid to the Collector-Treasurer of the City as managing trustee of the Neighborhood Housing Trust.

It is currently estimated that the amount of the Housing Contribution Payment, without regard to discounting as set forth in the foregoing Housing Creation proposal, will be as follows:

Gross Floor Area dedicated to Development Impact Uses as described in Article 26A, more specifically described in Section 8-1 of the Code as the following use items:

Office:	Use Item 41	148,289 square feet
Retail:	Use Item 34	<u>11,854</u> square feet
		160,143 square feet

As set forth above, the gross floor area of the Project devoted to such uses will, in the aggregate, exceed 100,000 square feet of gross floor area as defined in the Code. Based upon the schematic design for the Project as described in the Plan, the gross floor area devoted to such uses is expected to be approximately 160,143 square feet. The amount of the Housing Contribution shall be calculated by multiplying each square foot of gross floor area in the Project in excess of 100,000 square feet dedicated to the foregoing Development Impact Uses by \$5.00.

Development Impact Uses	160,143
Less	<u>100,000</u>
	60,143 x \$5.00 = \$300,715

As required by Section 26B-3 of the Boston Zoning Code, Applicant will also enter in to an Agreement with the Authority to make a Jobs Contribution Grant calculated by multiplying the each square foot of gross floor area in the Project dedicated to the foregoing Development Impact Uses in excess of 100,000 square feet by \$1.00. Such Jobs Contribution Grant will be payable in two equal installments as required by Section 26B-2.3.a. of said Article 26B.

Development Impact Uses	160,143
Less	<u>100,000</u>
	60,143 x \$1.00 = \$60,143

The precise amount of both the Housing Contribution Grant and the Jobs Contribution Grant will determined in accordance with said Article 26A and Article 26B based upon the gross floor area of the 45 Province Street development as shown in the contract documents submitted to the Department of Inspectional Services and upon which the building permit for the development is issued.

Density: As hereinbefore set forth, the gross floor area of the 45 Province Street development will be approximately 164,143 square feet. Based upon the area of the development site of 13,881, the floor area ratio for the development, calculated in accordance with the Boston Zoning Code will be approximately 11.83. A table showing the calculation of the gross floor area of the Project as shown in the schematic design of the Project, and the uses to which it is to be put, is attached hereto as Exhibit B-4 and incorporated herein by this reference.

Proposed Access and Traffic Circulation; Off-Street Loading: Access to and egress from the below grade parking in the 45 Province Street development will be off of Province Street. Access to loading facilities is off of Chapman Place. A detailed analysis of traffic impacts and a traffic access and management plan have been submitted by the Applicant to the Authority in the FPIR. Such plan, including the mitigation measures described therein, will be implemented by a Transportation Access Plan Agreement between the Applicant and the Transportation Department of the City of Boston.

Access to Public Transportation: The Project site is well served by public transportation. Stations providing connections to all of the rapid transit lines of the Massachusetts Bay Transportation Authority lie within an easy one block walk of the Project site.

Design Review: All design plans for the 45 Province Street development are subject to ongoing design review and approval by the Authority.

Zoning Relief: The 45 Province Street development site lies within the newly created Midtown Cultural District as established by Article 38 of the Code, but does not fall within any PDA or Protection District established thereunder. The site also lies within also a Restricted Parking District as defined in the Code. Relief from the provisions of the Code, either as conditional use permit or as exception, will be required under the following provisions of the Code:

Article 38:

- Section 38-7. An exception to permit the FAR of 45 Province Street to exceed the as-of-right FAR of 10, as the same may be increased pursuant to Section 38-8, and the as-of-right height of 155 feet to permit an FAR of 11.83 and a height of 162 feet.
- Section 38-8. An exception to allow an increase in the as-of-right FAR of one (1) ratio point by reason of the incorporation of Ground Level Uses and on-site day care facilities.
- Section 38-18. Both accessory parking for office and retail uses and parking garage are a conditional uses.
- Section 38-19. An exception from the street wall height requirements and sky plane setback requirements applicable to Bosworth Street and Province Street.

Article 30:

Article 30 incorporates into the Code by reference the all of the regulations of the Architectural Access Board (the "AAB") appearing at 521 CMR 1.00 et seq. (the "Access Code"). Applicant anticipates that it may seek relief from the AAB from requirements for multiple accessible toilets in the Day-Care Center portion of the Project. If such relief is granted by the AAB, Applicant will seek the same relief by way of exception from the Board of Appeal under Article 30 of the Code.

EXHIBIT 3-1

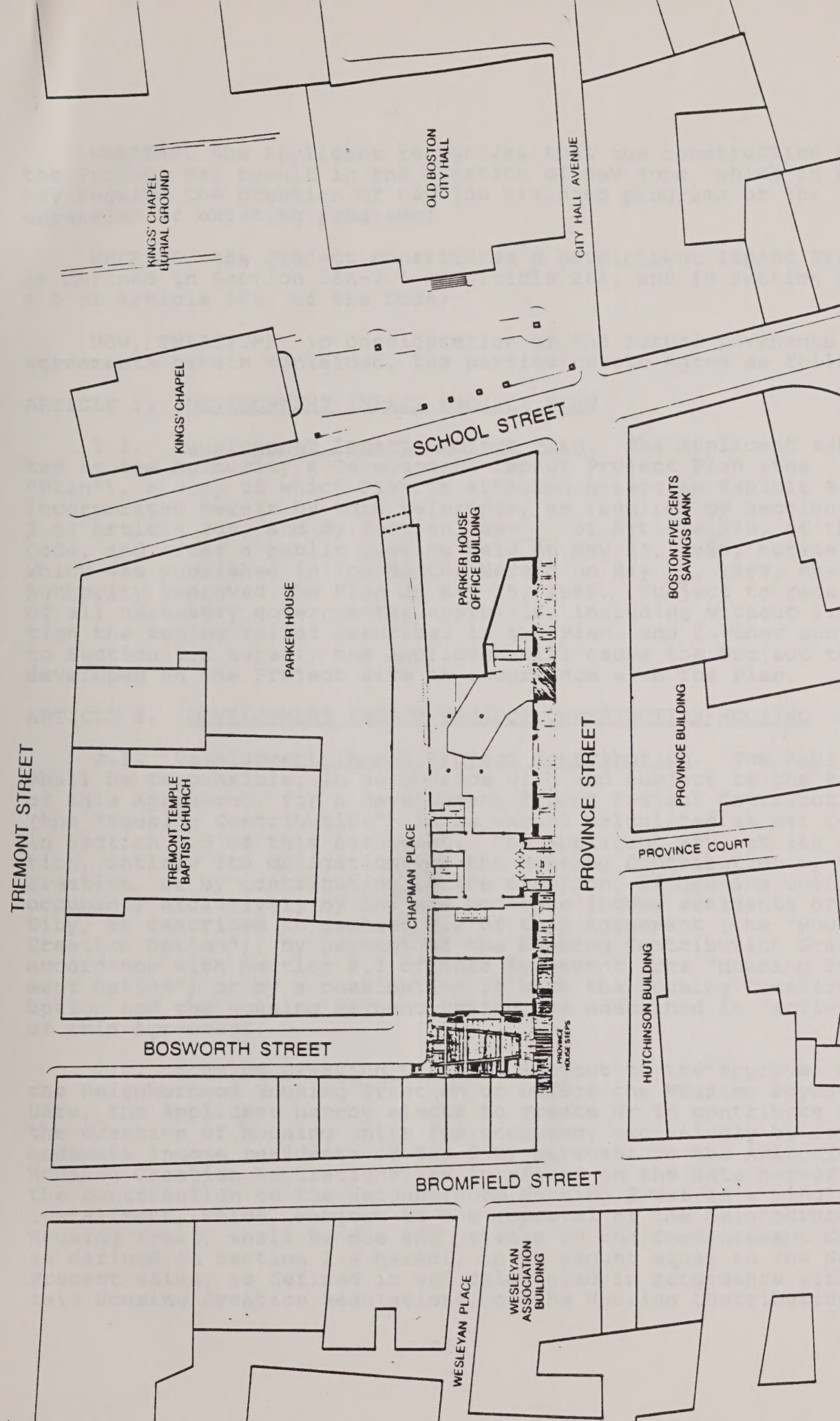
List of Exhibits:

- B-1 - Site Plan
- B-2 - List of Schematic Plans
- B-3 - List of Uses
- B-4 - Gross Floor Area Calculation

EXHIBIT B-1

Neighborhood Site Plan





WHEREAS, the Applicant recognizes that the construction of the Project may result in the creation of new jobs, which in turn may require the creation of new job training programs or the expansion of existing programs;

WHEREAS, the Project constitutes a Development Impact Project as defined in Section 26A-2.1 of Article 26A, and in Section 26B-2.1 of Article 26B, of the Code;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEVELOPMENT IMPACT PROJECT PLAN

1.1. Development Impact Project Plan. The Applicant submitted to the Authority a Development Impact Project Plan (the "Plan"), a copy of which Plan is attached hereto as Exhibit B and incorporated herein by this reference, as required by Section 26A-3 of Article 26A, and by Section 26B-___ of Article 26B, of the Code, and after a public hearing held on May 25, 1989, notice of which was published in The Boston Herald on May __, 1989, the Authority approved the Plan on May 25, 1989. Subject to receipt of all necessary governmental approvals, including without limitation the zoning relief described in the Plan, and further subject to Section 6.2 hereof, the Applicant will cause the Project to be developed on the Project Site in accordance with the Plan.

ARTICLE 2. DEVELOPMENT IMPACT PROJECT CONTRIBUTION-HOUSING

2.1. Development Impact Project Contribution. The Applicant shall be responsible, in accordance with and subject to the terms of this Agreement, for a Development Impact Project Contribution (the "Housing Contribution") in an amount calculated as set forth in Section 2.5 of this Agreement. The Applicant may, at its option, satisfy its obligation for the Housing Contribution by the creation, or by contributing to the creation, of housing units for occupancy exclusively by low and moderate income residents of the City, as described in Section 2.2 of this Agreement (the "Housing Creation Option"), by payment of the Housing Contribution Grant in accordance with Section 2.3 of this Agreement (the "Housing Payment Option") or by a combination of both the Housing Creation Option and the Housing Payment Option, as described in Section 2.4 of this Agreement.

2.2. Housing Creation Option. Subject to the approval of the Neighborhood Housing Trust on or before the Housing Payment Date, the Applicant hereby elects to create or to contribute to the creation of housing units for occupancy exclusively by low and moderate income residents of the City pursuant to the Authority's Housing Creation Regulations, as in effect on the date hereof, by the contribution to the Neighborhood Housing Trust in a single installment, which, subject to the approval of the Neighborhood Housing Trust, shall be due and payable on the Commencement Date, as defined in Section 2.8 hereof, in an amount equal to the Net Present Value, as defined in and calculated in accordance with said Housing Creation Regulations, of the Housing Contribution

Grant which would otherwise be paid in seven (7) equal annual installments, discounted to represent the present value of such seven (7) equal annual installments if paid in a single installment on the Housing Payment Date.

2.3. Housing Payment Option. If the Neighborhood Housing Trust shall not have approved Applicant's election of the Housing Creation Option as set forth in Section 2.2 on or before to the Housing Payment Date, the Applicant shall pay the Housing Contribution Grant in seven (7) equal annual installments. The first installment of the Housing Contribution Grant shall be due and payable on the Housing Payment Date, and subsequent installments shall be due and payable on the following six (6) annual anniversaries of the Housing Payment Date. All payments of the Housing Contribution Grant shall be paid to the Collector-Treasurer of the City as managing trustee of the Neighborhood Housing Trust. If the Applicant shall pay the Housing Payment Grant, as security for Applicant's obligation hereunder to make payment of six (6) subsequent annual installments, on the Housing Payment Date the Applicant shall provide for the benefit of the Neighborhood Housing Trust a Letter of Credit in the amount of the unpaid portion of the Housing Contribution Grant, which letter of credit shall be periodically extended so as to remain in effect until the Housing Contribution Grant shall have been paid in full, but the amount of such Letter of Credit may be reduced annually to reflect only the remaining unpaid amounts hereunder.

2.4. Conversion to Housing Creation Option After Housing Payment Date. If, after the Housing Payment Date but before having paid all of the installments due under the Housing Payment Option, the Applicant shall desire to elect the Housing Creation Option, the Applicant shall submit a proposal for the Housing Creation Option in writing to the Authority. Such proposal, if approved by the Authority and the Trust, shall satisfy the obligation of the Applicant to make any remaining annual installment payments due under the Housing Payment Option and shall satisfy the provisions of the Housing Contribution requirement.

2.5. Calculation of Housing Contribution. The Project will include the following areas dedicated to Development Impact Uses as described in Article 26A, more specifically described in Section 8-1 of the Code as the following use items:

Office:	Use Item 41	148,289 square feet
Retail:	Use Item 34	<u>11,854</u> square feet
		160,143 square feet

As set forth above, the gross floor area of the Project devoted to such uses will, in the aggregate, exceed one hundred thousand (100,000) square feet of gross floor area as defined in the Code. Based upon the schematic design for the Project as described in the Plan, the gross floor area devoted to such uses is expected to be approximately 160,143 square feet. The amount of the Housing

Contribution shall be calculated by multiplying each square foot of gross floor area in the Project in excess of one hundred thousand (100,000) square feet dedicated to such uses by Five and 00/100 Dollars (\$5.00) (the "Housing Formula"). Under the Housing Formula, it is anticipated that the amount of the Housing Contribution will be approximately Three Hundred Thousand Seven Hundred Fifteen and 00/100 Dollars (\$300,715.00). The parties acknowledge that the amount of the Housing Contribution is based upon the gross floor area of the Project as estimated in the Plan. If the gross floor area, as defined in Section 2-1(21) of the Code and as certified by the Project Architect (as identified in the Plan) on the Housing Payment Date differs from the above stated estimate, the Housing Contribution shall be the amount required under the Housing Formula.

2.6. No Change in Housing Contribution. Subject to the final calculation required by Section 2.5 hereof and to the issuance of a building permit for the Project before the effective date of any amendment of the Code as hereinafter described, any change in the formula for the calculation of the Housing Contribution as may be adopted by the Boston Zoning Commission pursuant to Section 26A-3.2(c) of the Code, or pursuant to Chapter 371 of the Acts of 1987, or pursuant to any other general or special act of the Great and General Court of the Commonwealth of Massachusetts hereafter enacted, shall not increase the Housing Contribution determined in accordance with Section 2.5 hereof.

2.7. Housing Payment Date. The Housing Payment Date shall be the date of issuance to the Applicant or Applicant's general contractor by the Inspectional Services Department of the City of a building permit for the Project.

2.8. Termination of Housing Contribution Obligation. If a building permit is not granted for any part of the Project, or if construction of any part of the Project is abandoned after a building permit is obtained but prior to the Commencement Date, as hereinafter defined, or if a building permit issued for the Project lapses and is not renewed, then the Applicant shall have no responsibility for the Housing Contribution with respect to the Project. If Applicant shall so abandon the Project after a building permit is obtained, Applicant shall file with the Authority and the Neighborhood Housing Trust an affidavit stating that the Project is so abandoned. As used herein, the term Commencement Date means the date on which any substantial construction on the Project commences such as excavation, foundation, and other subsurface work, but substantial construction shall not include the demolition of any structures or portions thereof now existing on the Project Site or the conduct of borings, soils investigations or similar activities, whether or not the same require the issuance of a partial building permit.

2.9. Credit Towards Housing Contribution. If the City should hereafter impose, assess, or levy any excise or tax upon the Project, the proceeds of which are dedicated, in whole or in

part, to the establishment of a fund for purposes substantially the same as the purposes recited in Section 26A-1 of Article 26A of the Code, amounts payable hereunder by Applicant shall be credited against such excise or tax; provided, however, that if such crediting shall not be legally permissible to satisfy payment of such tax or excise, the obligations of the Applicant hereunder shall, to the extent of the amount of such tax or excise, thereupon cease and be of no further force and effect.

ARTICLE 3. DEVELOPMENT IMPACT PROJECT CONTRIBUTION-JOBS

3.1. Jobs Contribution Grant. The Applicant shall be responsible, in accordance with and subject to the terms of this Agreement, for a Jobs Contribution Grant (the "Jobs Contribution") in an amount calculated as set forth in Section 3.5 of this Agreement. The Applicant may, at its option, satisfy its obligation for the Jobs Contribution by the creation, or by contributing to the creation, of a job training program for workers who will be employed, on a permanent basis, in the Project as described in Section 3.2 of this Agreement (the "Jobs Creation Option") or by payment of the Jobs Contribution Grant in accordance with Section 3.3 of this Agreement (the "Jobs Payment Option").

3.2. Jobs Creation Option. If the Applicant shall elect to create or to contribute to the creation of a job training program for workers who will be employed, on a permanent basis, in the Project, the Applicant shall submit a proposal for the Jobs Creation Option in writing to the Director of the Mayor's Office of Jobs and Community Services ("OJCS"). Such proposal, if submitted to the Director of OJCS on or before the Jobs Payment Date, as hereinafter defined in Section 3.6 of this Agreement and if approved by the Director of OJCS and the Neighborhood Jobs Trust, shall satisfy the Jobs Contribution requirement set forth in Section 3.1 of this Agreement.

3.3. Jobs Payment Option. If the Applicant shall not have elected the Jobs Creation Option on or before the Jobs Payment Date, the Applicant shall pay the Jobs Contribution Grant in two (2) equal annual installments. The first installment of the Jobs Contribution Grant shall be due and payable on the Jobs Payment Date, and the second installment shall be due and payable on the one year anniversary of the Jobs Payment Date. All payments of the Jobs Contribution Grant shall be paid to the Collector-Treasurer of the City as managing trustee of the Neighborhood Jobs Trust.

3.4. Calculation of Jobs Contribution. The Project will include the following areas dedicated to Development Impact Uses as described in Article 26B, more specifically described in Section 8-1 of the Code as the following use items:

Office:	Use Item 41	148,289 square feet
Retail:	Use Item 34	<u>11,854</u> square feet
		160,143 square feet

As set forth above, the gross floor area of the Project devoted to such uses will, in the aggregate, exceed one hundred thousand (100,000) square feet of gross floor area as defined in the Code. Based upon the schematic design for the Project as described in the Plan, the gross floor area devoted to such uses is expected to be approximately 160,143 square feet. The amount of the Jobs Contribution shall be calculated by multiplying each square foot of gross floor area in the Project dedicated to such uses in excess of one hundred thousand (100,000) square feet by One and 00/100 Dollar (\$1.00) (the "Jobs Formula"). Under the Jobs Formula, it is anticipated that the amount of the Jobs Contribution will be approximately Sixty Thousand One Hundred Forty Three and 00/100 Dollars (\$60,143.00). The parties acknowledge that the amount of the Jobs Contribution is based upon the gross floor area of the Project as estimated in the Plan. If the gross floor area, as defined in Section 2-1(21) of the Code and as certified by the Project Architect (as identified in the Plan) on the Jobs Payment Date differs from the above stated estimate, the Jobs Contribution shall be the amount required under the Jobs Formula.

3.5. No Change in Jobs Contribution. Subject to the final calculation required by Section 3.4 hereof and to the issuance of a building permit for the Project before the effective date of any amendment of the Code as hereinafter described, any change in the formula for the calculation of the Jobs Contribution as may be adopted by the Boston Zoning Commission pursuant to Section 26B-3.1(c) of the Code, or pursuant to Chapter 371 of the Acts of 1987, or pursuant to any other general or special act of the Great and General Court of the Commonwealth of Massachusetts hereafter enacted, shall not increase the Jobs Contribution determined in accordance with Section 3.4 hereof.

3.6. Jobs Payment Date. The Jobs Payment Date shall be the date of issuance to the Applicant or Applicant's general contractor by the Inspectional Services Department of the City of a building permit for the Project.

3.7. Termination of Jobs Contribution Obligation. If a building permit is not granted for any part of the Project, or if construction of any part of the Project is abandoned after a building permit is obtained but prior to the Commencement Date, or if a building permit issued for the Project lapses and is not renewed, then the Applicant shall have no responsibility for the Jobs Contribution with respect to the Project. If Applicant shall so abandon the Project after a building permit is obtained, Applicant shall file with the Authority and the Neighborhood Jobs Trust an affidavit stating that the Project is so abandoned.

3.8. Credit Towards Jobs Contribution. If the City should hereafter impose, assess, or levy any excise or tax upon the Project, the proceeds of which are dedicated, in whole or in part, to the establishment of a fund for purposes substantially the same as the purposes recited in Section 26B-1 of Article 26B of the

Code, amounts payable hereunder by Applicant shall be credited against such excise or tax; provided, however, that if such crediting shall not be legally permissible to satisfy payment of such tax or excise, the obligations of the Applicant hereunder shall, to the extent of the amount of such tax or excise, thereupon cease and be of no further force and effect.

ARTICLE 4. BOSTON RESIDENTS CONSTRUCTION EMPLOYMENT PLAN

4.1. Boston Residents Construction Employment Plan. The Applicant shall enter into a Boston Residents Construction Employment Plan with OJCS.

ARTICLE 5. EMPLOYMENT OPPORTUNITY PLAN

5.1. Employment Opportunity Plan. The Applicant shall become a signatory to the Memorandum of Understanding establishing the Boston for Boston program designed to achieve the goal that 50 percent of the permanent employment opportunities created by the Project shall be made available to Boston residents.

ARTICLE 6. TRANSPORTATION ACCESS PLAN

6.1 Transportation Access Plan Agreement. The Applicant shall enter into a Transportation Access Plan Agreement with the Transportation Department of the City of Boston pursuant to which Applicant will agree to the transportation access and traffic mitigation measures set forth in the Final Project Impact Report for the Project as approved by the Authority pursuant to Article 31 of the Code.

ARTICLE 7. SCOPE AND LIMITS OF LIABILITY

7.1. Scope of Applicant's Liability. The Authority on its own behalf and as agent for the Neighborhood Housing Trust and the Neighborhood Jobs Trust, agrees to look solely to the interest of the Applicant from time to time in the Project for any claim against the Applicant arising under this Agreement.

7.2. Personal Liability. Neither the Applicant nor any trustees, beneficiary, partner, stockholder, manager, officer, director, agent or employee of the Applicant or its successors and assigns shall be personally or individually liable under this Agreement beyond the extent of its or their interest in such Project.

7.2. Limited Undertaking. Nothing in this Agreement shall be construed as an undertaking by the Applicant to construct or complete the Project, the sole obligation of the Applicant being to adhere to the Plan if and to the extent that the Project is undertaken by Applicant, and to fulfill the monetary and other obligations set forth in this Agreement if the Project is undertaken.

ARTICLE 8. MISCELLANEOUS PROVISIONS.

8.1. Amendments; Law to be Applied. No amendment to this Agreement shall be effective unless in writing and executed by the all of the parties hereto. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, and sets forth the entire agreement among the parties. This Agreement is binding upon and enforceable against, and inures to the benefits of, the parties and their respective successors, assigns, and legal representatives, including, without limitation, any successor owner of the Project.

8.2. Capitalized Terms. Capitalized terms used herein without definition which are defined in Article 26A or Article 26B of the Code shall have the meanings ascribed to them therein.

8.3. Notice. All notices under this Agreement must be in writing and shall be given by hand delivery, by reputable overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows:

If to the Authority: Boston Redevelopment Authority
Director's Office
City Hall Plaza, 9th Flr.
Boston, Massachusetts 02201

with a copy to:

Boston Redevelopment Authority
Chief General Counsel
Building 33
33 Third Avenue
Charlestown Navy Yard
Boston, Massachusetts

If to the Applicant: David Epstein, Trustee
The Province Street Development Trust
c/o The Abbey Group
575 Boylston Street
Boston, Massachusetts 02116

with a copy to:

McCormack & Putziger
265 Franklin Street
Boston, Massachusetts 02110
Attn: Myrna Putziger P.C.

8.5. Satisfaction of Development Impact Project Requirements. By the execution and delivery of this Agreement, the Applicant has satisfied the requirement of Sections 26A-3(2) and 26B-3.1 of the Code insofar as satisfaction of the requirements of

those sections is a precondition to the granting, allowing, or adopting of a variance, conditional use permit, exception, or zoning map or text amendment with respect to the Applicant's development of the Project Site.

8.6. Captions. The captions of the articles and sections of this Agreement are for convenience only and shall not affect the meaning or interpretation of this Agreement.

8.7. Notice of Transfer of Project. For so long as any obligations of Applicant under Articles 2 or 3 hereof shall remain outstanding, Applicant shall give to the Authority written notice of any sale or transfer of the right to construct the Project if prior to completion thereof, or of the Project if the same is then completed, the name and address of the successor to Applicant hereunder, and a copy of the instrument pursuant to which Applicant assigned to such successor, and such successor assumed, the obligations of Applicant hereunder.

ARTICLE 9. CERTAIN VOLUNTARY CONTRIBUTIONS.

9.1. Voluntary Contributions for Cultural Benefit. Applicant shall, as a part of the Project, undertake the following activities designed to further the objectives of the Midtown Cultural District Plan:

9.1.1. Wall Art. Applicant shall cause the office lobby of the Project accessible to the public during normal business hours to be decorated with one or more original paintings.

9.1.2. Interpretive Sculpture. In connection with Applicant's restoration of the steps leading from Province Street to Bosworth Street, the so-called "Province House Steps", to their original configuration, Applicant shall commission an interpretive sculpture relating to the historic origin of the Province House Steps and shall incorporate such sculpture into the design for the restoration of the Province House Steps, such sculpture and the installation thereof to cost not in excess of \$25,000.00.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

Robert Epstein, as Trustee of
The Province Street Development
Trust and not individually

[Signatures continued on following page]

David Epstein, as Trustee of The
Providence Street Development Trust
and not individually

John R. Svenson, as Trustee of The
Providence Street Development Trust
and not individually

Approved as to Form:

BOSTON REDEVELOPMENT AUTHORITY

Chief General Counsel

By: Stephen Coyle, Director

EXHIBIT A

1. Legal Description of the Project Area
2. Plan of Parcels and Rights to be Acquired

WESTERLY
by Francis Place, Two Hundred Four and 40/100 (204.40) Feet;

NORTHWESTERLY
by Land now or formerly of G.J. Sheppard Company
Twenty-Three and 0/100 (23.00) Feet;

NORTHEASTERLY
by Land now or formerly of G.J. Sheppard Company
Twenty-Nine and 14/100 (29.14) Feet;

NORTHEASTERLY
by Land now or formerly of G.J. Sheppard Company
Twenty and 0/100 (20.00) Feet.

Containing 13.81 Square Feet.

The above land is bounded on the northwestern parcels of land and one-half one fee in Sawdust Street adjacent thereto, one corner of which is Adjacent Land under Certificate of Title No. 156220 in Land Registration Book 497, Page 150 and is hereinafter as follows:

A certain parcel of land situated in District, Burial Ground, Wellington, bounded on the north by Province Street, Fifty-Four and 30/100 (54.30) Feet;

Southeasterly by Sawdust Street, Twenty-Two and 21/100 (22.21) Feet;

Northeasterly Fifty-Five and 0/100 (55.00) Feet, the line running through the middle of a 12" wall;

Northeasterly Twenty-Nine and 22/100 (29.22) Feet by Land now or formerly of the Sheppard Family Company;

All of said boundaries are determined by the Court to be correct as shown on a Plan drawn by George W. Sheppard, Surveyor, dated December 1, 1916, as modified and corrected by the Court, filed in the Land Registration Office as Plan No. 15534-A, a copy of a portion of which is filed with Certificate of Title No. 15147.

The land with the buildings thereon situated in Boston, Suffolk County, Massachusetts, being shown on a plan entitled, "Plan of Land in Boston, Mass.", dated March 11, 1982 by George N. Giunta, R.L.S., said Plan being recorded with Suffolk County Registry of Deeds, Book 9924, Page 414, and bounded and described as follows:

SOUTHEASTERLY

by Province Street, Two Hundred Seventy and 24/100
(270.24) feet;

SOUTHWESTERLY

by the middle line of Bosworth Street, Fifty-Seven and
72/100 (52.72) feet;

NORTHWESTERLY

by Chapman Place, Two Hundred Four and 49/100 (204.49)
feet;

NORTHEASTERLY

by land now or formerly of G.J. Sherrard Company
Thirty-Three and 10/100 (33.10) feet;

NORTHEASTERLY AGAIN

by land now or formerly of G.J. Sherrard Company
Sixty-Six and 14/100 (66.14) feet;

NORTHEASTERLY AGAIN

by land now or formerly of G.J. Sherrard Company
Sixteen and 13/100 (16.13) feet.

Containing 13,881 square feet.

The above land is composed of six contiguous parcels of land and one-half the fee in Bosworth Street adjacent thereto, one parcel of which is Registered Land under Certificate of Title No. 100320 in Land Registration Book 497, Page 120 and is described as follows:

A certain parcel of land situated in Boston, Suffolk County, Massachusetts, bounded Southeasterly by Province Street, Fifty-Four and 20/100 (54.20) feet;

Southwesterly by Bosworth Street, Twenty-Six and 51/100
(26.51) feet;

Northwesterly Fifty-Five and 16/100 (55.16) feet, the
line running through the middle of a 12" wall;

Northeasterly Twenty-Seven and 22/100 (27.22) feet by
land now or formerly of the Johnson Realty Company.

All of said boundaries are determined by the Court to be located as shown on a Plan drawn by George H. Sherman, Surveyor, dated December 6, 1924, as modified and approved by the Court, filed in the Land Registration Office as Plan No. 10554-A, a copy of a portion of which is filed with Certificate of Title No. 18147.



EXHIBIT B

Development Impact Project Plan

10 PARK HILL STREET, BOSTON, MASSACHUSETTS
(Province and Roworth Streets and Chapman Place)

Background: The Developer is Robert Epstein, David Epstein and John A. Svenson as trustees of The Province Street Development Trust under Declaration of Trust dated July 17, 1957, recorded with the Suffolk Registry of Deeds at Book _____, Page _____ and registered with the Suffolk Registry District of the Land Court as Document No. 37925 (the "Declaration"), an affiliate of The Abbey Group, with a principal place of business at The Abbey Group, 111 Appleton Street, Boston, Massachusetts 02114.

Contact person: David Epstein

Architect: Kruger/Coff Associates, Inc.
401 Vester Street
Cambridge, Massachusetts

Contact person: Edward Kruger

Site Description: Approximately 13,331 square feet of land with the buildings and other improvements thereon now known and numbered at 5-47 Province Street, bounded by Province Street, Roworth Street and Chapman Place and the office building situated at 48 School Street and adjacent thereto as the Parker House Office Building. The site is currently used and occupied as a 15-story mechanical parking garage with a parking capacity for 374 vehicles, and a surface parking lot with a parking capacity for 33 vehicles. A plan showing the present site is annexed hereto as Exhibit A-1 and incorporated herein by this reference. In addition to the foregoing site, the undertaking of the Project will require the acquisition of the following additional property, or rights:

A. The discontinuance of the Public Improvement Commission of the public way in portions of Province Street, Roworth Street and Chapman Place and beneath such public ways, in which portions of the parking garage will be located and (ii) above such public ways in which portions of certain systems, corridors, and similar architecture features will be located;

B. The acquisition from the City of Boston of fee title to the portions of Chapman Place and Roworth Street owned by the City of Boston in which such parking garage would be located;

C. The acquisition from the owner of the Parker House Hotel of fee title to three portions of Chapman Place owned by the

BOSTON REDEVELOPMENT AUTHORITY
May 25, 1989
Development Impact Project Plan

45 PROVINCE STREET, BOSTON PROPER
(Province and Bosworth Streets and Chapman Place)

Developer: The Developer is Robert Epstein, David Epstein and John R. Svenson as Trustees of The Province Street Development Trust under Declaration of Trust dated July 17, 1987, recorded with the Suffolk Registry of Deeds at Book _____, Page _____ and registered with the Suffolk Registry District of the Land Court as Document No. 427915 (the "Applicant"), an affiliate of The Abbey Group, with a principal place of business c/o The Abbey Group, 575 Boylston Street, Boston, Massachusetts 02116.

Contact person: David Epstein

Architects: Bruner/Cott Associates, Inc.
301 Vassar Street
Cambridge, Massachusetts

Contact Person: Simeon Bruner

Site Description: Approximately 13,881 square feet of land with the buildings and other improvements thereon now known and numbered at 5-47 Province Street, bounded by Province Street, Bosworth Street and Chapman Place and the office building numbered at 44 School Street and sometimes referred to as the Parker House Office Building. The site is currently used and occupied as 15-story mechanical parking garage with a parking capacity for 276 vehicles, and a surface parking lot with a parking capacity for 29 vehicles. A plan showing the project site is annexed hereto as Exhibit B-1 and incorporated herein by this reference. In addition to the foregoing site, the undertaking of the Project will require the acquisition of the following additional property or rights:

A. The discontinuance by the Public Improvement Commission of the public way in portions of Province Street, Bosworth Street, and Chapman Place (i) beneath such public ways, in which portions of the parking garage will be located and (ii) above such public ways in which portions certain oriels, cornices, and similar architectural features will be located;

B. The acquisition from the City of Boston of fee title to the portions of Chapman Place and Bosworth Street owned by the City of Boston in which such parking garage would be located;

C. The acquisition from the owner of the Parker House Hotel of fee title to those portions of Chapman Place owned by the

EXHIBIT B-2

List of Schematic Design Plans

Site Plan

Location Map

Aerial View Site Plan

Aerial View Site Map

Site Section

View of Research Station

Site and Utility Map

Lobby Level (Research Station)

Research Station Level

Typical Floor Plan

Research Level

Garage Entry Level

Typical Garage Level

Garage Level

Research Station Entrance

Research Station

Research Station Entrance, Research Station Entrance

Research Station

Site and Utility Map

List of Schematic Design Drawings

Drawing NameDate

View from South

May, 1989

Location Plan

Aerial View from South

Aerial View from Northeast

Site Sections

View of Bosworth Street

Site and Lobby Plan

Lobby Level (Streetscape Improvements)

Daycare Mezzanine Level

Typical Floor Plan

Penthouse Level

Garage Entry Level

Typical Garage Level

Garage Lower Level

Province Street Elevation

Elevation Details

Chapman Place Elevation, Bosworth Street Elevation

Building Sections

Site and Utility Survey

EXHIBIT B-3

Admitted Uses

Proposed Uses

- #17 Day care center, primary school, kindergarten
- #27 Public Park
- #34 Retail Business
- #46a Place for sale or lease of one or more parcels of land or with the off-garaged structures
- #47 Place for sale, service and repair of food and drink, provided that there is no serving of food or beverages
- #55 Office of Architecture, Engineering, Surveying, Planning, or other professional services, and necessary to such use
- #60 Real estate, insurance, or other agency office
- #61 Office building, post office, bank or similar establishment
- #62 Office or display of auto parts of a wholesale, jobbing or repairing nature
- #63 Repair shop, beauty shop, shoe repair shop, self-service laundry, printing and related activities of laundry or dry-cleaning or similar use
- #64 Tailor shop, hair beauty, dry cleaning shop
- #65 Wholesale, jobbing or repair of television sets

Other Uses

Other uses as permitted by a future zoning ordinance and the Michigan Zoning Ordinance

Conditional Uses

- #77 Accessory building for all of the above uses
- #78 Fencing, pump

Project Information: Proposed Uses

Use Items, Boston Zoning Code Article 8

Allowed Uses

- #17 Day care center; nursery school; kindergarten
- #27 Public Park
- #34 Retail Business
- #36A Place for sale over the counter of on-premises prepared food or drink for off-premises consumption.
- #37 Place for sale, service and consumption of food and drink provided that there is no dancing nor live entertainment.
- #39 Office of accountant, architect, attorney, dentist, physician, or other professional person, not accessory to main use.
- #40 Real estate, insurance, or other agency office.
- #41 Office building, post office, bank or similar establishment.
- #42 Office or display or sales space of a wholesale, jobbing or distributing house.
- #43 Barber shop; beauty shop; shoe repair shop; self-service laundry; pickup and delivery station of laundry or dry-cleaner; or similar use.
- #44 Tailor shop; hand laundry, dry cleaner shop.
- #48 Research laboratory; radio or television studio.

Other Uses

Other uses as permitted in a business district generally and the Midtown Cultural District specifically.

Conditional Uses

- #72 Accessory parking for all of the above uses
- #59 Parking garage

Dimensions and FAR Calculations

Project Information: DimensionsBASE BUILDING F.A.R. SQUARE FOOTAGE

FLOOR	BLDG GROSS S.F.	ELEV'R SHAFTS	MECH SHAFTS	MECH ROOMS	F.A.R. GROSS SF	OFFICE	RETAIL	DAY CARE
LOBBY	10,635	0	147	709	9,779	3,307	6,472	
MEZZ	10,127	311	54	380	9,382	0	5,382	4,000
2	11,940	311	54	380	11,195	11,195		
3	12,860	198	54	380	12,228	12,228		
4	12,860	198	54	380	12,228	12,228		
5	12,860	198	54	380	12,228	12,228		
6	12,860	198	54	380	12,228	12,228		
7	12,860	198	54	380	12,228	12,228		
8	12,860	198	54	380	12,228	12,228		
9	12,860	198	54	380	12,228	12,228		
10	12,860	198	54	380	12,228	12,228		
11	12,860	198	54	380	12,228	12,228		
12	12,860	198	54	380	12,228	12,228		
PH	12,139	198	54	380	11,507	11,507		
TOTAL	173,441	2,800	849	5,649	164,143	148,289	11,854	4,000

GARAGE SQUARE FOOTAGE

LEVEL	GROSS S.F.	OF CARS	S.F./CAR
P-1	19,700	44	448
P-2	19,700	56	352
P-3	19,700	56	352
P-4	19,700	56	352
P-5	19,700	76	259
P-6	19,700	76	259
P-7	17,575	76	231
RAMP	4,000		
MECH	3,000		
TOTAL	142,775	440	324

F.A.R. CALCULATION

F.A.R. Square Footage	164,143
Land Area	13,881
F.A.R.	11.83

BOSTON REDEVELOPMENT AUTHORITY

Chairman's Statement

May 25, 1989

This is a Public Hearing before the Boston Redevelopment Authority being held in conformance with Articles 26A and 26B of the Boston Zoning Code to consider Development Impact Project Plan proposed by the Abbey Group for the construction of a building at 45 Province Street, Boston Proper.

This hearing was duly advertised on May 19, 1989 in the Boston Herald.

In a Boston Redevelopment Authority hearing on a Development Impact Project Plan, the Authority staff and the developer will first present their case and are subject to questioning by members of the Authority only. Thereafter, others who wish to speak in favor of the proposed Plan are afforded an opportunity to do so under the same rules as to questioning. Following that, those who wish to speak in opposition may do so, again under the same rules of questioning. Finally, the proponents are allowed a period of five to ten minutes for rebuttal if they so desire.

The proponents will now be introduced.

M E M O R A N D U M

MAY 25, 1989

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: WILLIAM D. WHITNEY, ASSISTANT DIRECTOR FOR
URBAN DESIGN AND DEVELOPMENT
KRISTEN J. MCCORMACK, DIRECTOR, MIDTOWN CULTURAL
DISTRICT DEVELOPMENT
NANCY A. TENTINDO, PROJECT MANAGER
URBAN DESIGN AND DEVELOPMENT

SUBJECT: DEVELOPMENT IMPACT PROJECT PLAN AND DEVELOPMENT IMPACT
PROJECT AGREEMENT FOR 45 PROVINCE STREET

EXECUTIVE

SUMMARY: This memorandum requests that with regard to a proposal to construct an office/retail building at 45 Province Street (1) the Authority recommend approval to the Board of Appeal of a conditional use permit and exceptions pursuant to Article 38 of the Code, the Midtown Cultural District and Article 30; (2) the Authority approve the Development Impact Project Plan and Development Impact Project Agreement pursuant to Articles 26A and 26B of the Code; and (3) the Authority authorize the Director to issue an Adequacy Determination pursuant to Article 31 of the Code.

The 45 Province Street Project (the "Proposed Project") is a proposal to construct a 13-story office/retail building with a daycare center and seven levels of below-grade parking. It is the first proposed commercial development project to be considered under the new permanent zoning for the Midtown Cultural District, Article 38. The Proposed Project will include approximately 148,289 gross square feet of office space, approximately 11,854 gross square feet of retail/restaurant space located on the ground and mezzanine levels, a 4,000 gross square-foot childcare center for approximately 47 children, and seven levels of below grade parking for 440 automobiles. The height proposed is 162 feet to the top of the last occupied floor and FAR is 11.8. A fact sheet and site location map are attached.

The Proposed Project site is a 13,881 square-foot parcel located on Province Street between School and Bromfield Streets in the newly created Midtown Cultural District. The project replaces an existing 276-car mechanical parking garage and adjacent 29-car surface parking lot.

In order to construct the Proposed Project, Robert Epstein, David Epstein, and John R. Svenson, as Trustees of the Province Street Development Trust, an affiliate of The Abbey Group (the "Appellant") requests approval of a Development Impact Project Plan ("DIPP") and a Development Impact Project Agreement ("Agreement") pursuant to Articles 26A and 26B of the Boston Zoning Code (the "Code"). The Appellant also seeks a conditional use permit and exceptions pursuant to Article 38. Moreover, because the Proposed Project is subject to Article 31 of the Code, authorization is requested for the Director to issue an Adequacy Determination pursuant to Section 31-5.6.

The Midtown Cultural District - Article 38

The Midtown Cultural District Plan was developed to guide the reemergence of Midtown Boston as a center of commerce, culture, and city life.

On January 12, 1989, the BRA adopted the Midtown Cultural District Plan (the "Plan") as the portion of the general plan for the city applying to the Midtown Cultural District. On March 6, 1989, the Boston Zoning Commission amended the Code to incorporate Article 38, governing the Midtown Cultural District. Pursuant to Article 38, the Proposed Project is located within the Midtown Cultural District in an area which for a project subject to Article 31, Development Review Requirements, has an as-of-right height of 155 feet and as-of-right FAR of 10.

The Proposed Project meets many of the objectives of the Midtown Cultural District Plan and substantially complies with Article 38.

o Height and Massing in Substantial Accord

The Proposed Project is in substantial accord with the maximum as-of-right building height and floor area ratio (FAR) allowed by Article 38. The building, as proposed, is 162 feet to the top of the last occupied floor, only seven feet higher than the as-of-right height standard or less than a full office floor. The FAR is 11.8 or 1.8 above the FAR standard of 10. Moreover, the Proposed Project meets the criteria set forth in Section 38-7.2, for building height and FAR in excess of but in substantial accord with as-of-right building height and FAR. It is recommended therefore that exceptions for building height and FAR in substantial accord with the as-of-right building height and FAR be granted.

o Ground Level Uses/FAR

The Proposed Project complies with Section 38-8 of the Midtown Zoning by providing active ground floor uses and daycare. The Proposed Project will have retail use on its Province Street edge on the ground floor and mezzanine and a restaurant on its Bosworth Place edge on the ground and mezzanine levels. In addition, a daycare center is proposed on the mezzanine level.

Pursuant to Section 38-8 of the Code, floor area devoted to retail uses on the ground floor or entered from a sidewalk by stairs traversing less than one full level and on-site childcare qualify a project for increased FAR up to one ratio point provided these uses equal or exceed the Proposed Project's site area. In this instance, the Proposed Project contains 6,472 SF of ground-level retail, 5,382 SF of mezzanine level retail entered by stairs from the sidewalk, and 4,000 SF of daycare. These uses total 15,854 SF which is in excess of the Proposed Project's site area of 13,881 SF. It is recommended, therefore, that an exception for one additional ratio point over the maximum as-of-right FAR of 10 be granted. This exception, added to the exception recommended in the preceding paragraph for FAR in substantial accord with as-of-right FAR, will result in an actual FAR for the Proposed Project of 11.8.

o Public Realm/Visual Arts

The Proposed Project furthers the objective of the Plan to rejuvenate and use streets and alleys, to preserve the district's historic street pattern, and to create accessible seating areas and public spaces. The historic Province House steps will be rebuilt as part of the project and a small park created at the crown of the steps. In keeping with the objective of the Plan to promote art and culture in the District, the developer has committed to (1) hiring an artist to work with the project architect to explore opportunities for artistic expression within the proposed park; (2) commission through a design competition an interpretative commemoration of the Province House Steps funded by a \$25,000 grant from the developer; and (3) install pieces of art in the public spaces within the building. In addition, the historic cobblestones in Chapman Place will be restored and the Province Street sidewalk improved with appropriate paving and lighting. A letter is attached from the Boston Preservation Alliance supporting the Proposed Project.

o Daycare

The 45 Province Street Project meets the objective of the Plan to provide daycare facilities for the growing Midtown workforce thereby helping employers attract and retain qualified workers. Section 38-18.4 of the Midtown Zoning requires that at least two percent of the Proposed Project be devoted to a daycare center. The Proposed Project exceeds the two percent requirement by devoting 4,000 square feet to a daycare center accommodating approximately 47 children.

o Design

The architectural design of the Proposed Project takes its cues from the character of neighboring buildings. Like its neighbors this building hugs the lot lines and provides a strong street wall without setbacks. The facade is organized so as to acknowledge the traditional differentiation between the base, middle, and top of the streetwall, and also acknowledge the typical building dimensions in the district that give the streetwalls their vertical orientation.

The building's facade employs the traditional Boston materials of brick and stone. The base of the building is a two-story expression that provides visual richness and a sense of place at the street level. The windows for the office space are set into a masonry openings. The windows are paired, grouped, and gathered to reinforce a central element of the facade and to create an implied focus of activity within the building. The windows are ranged at the top floor with deep shadow lines and limestone trim to create a cornice against the sky. Cornice details and building heights reinforce the building's relationship with neighboring buildings.

However, due to conforming with the massing of surrounding buildings (the Parker House Hotel, the Parker House office building, the Boston Five Cents Savings Bank, and the Jeweler's Building), and to unique characteristics of the lot which is extremely shallow being only 61 feet in width at its widest point, the building does not comply with the requirements of Section 38-19 regarding street wall and sky plane setbacks. It is therefore recommended that exceptions be granted from the provision of Section 38-19 which require setbacks for buildings on Province and Bosworth Streets.

o Parking

The Proposed Project includes a seven-level below grade parking structure with the capacity to park 440 cars. Of these spaces, 276 are proposed for public, fee parking while 164 (or 1 space per every 1000 square feet of commercial space) are proposed to be reserved for tenants of the building. The parking facility, which will be open 24 hours a day, will provide critical short-term parking for businesses in the area.

While the garage would be striped for 380 cars, the developer proposes to make the bottom three floors valet park floors, thus allowing additional automobiles to be stored for a total capacity of 440. This measure would ensure additional access to the garage for the public, particularly during high demand times such as the Christmas shopping season.

1. Conditional Use Permit

Under the Restricted Parking District, within which the Midtown Cultural falls, and under Section 38-18.6 (d), parking is a conditional use. Therefore, it is recommended that a Conditional Use Permit be granted to allow for the construction of a parking garage with the capacity to park 380 cars without valet or 440 cars with valet.

2. Parking Freeze Permit and Exemptions for Tenant Spaces

The Proposed Project is also located within the area subject to the Parking Freeze, a measure to minimize air pollution in the Boston Region under a plan required by the federal Clean Air Act. The Parking Freeze is administered by the Boston Air Pollution Control Commission.

The Parking Freeze requires that within the subject area new commercial parking must be accompanied by the elimination of spaces at least equal to the number of new spaces created. The Freeze applies only to commercial spaces where cars are parked for a fee.

The appellant is required to apply for a Parking Freeze permit for the 276 commercial fee spaces proposed and for an Exemption from the Freeze for the proposed 164 tenant spaces.

The existing spaces in the Province Street Garage and adjacent lot will revert directly back to the City. Rights

to these eliminated spaces are not transferable to the Proposed Project.

Development Impact Projects - Article 26A & 26B

Under the DIPP and the Agreement, the Developer will make a Housing Contribution of approximately \$300,715. The developer elects, subject to the approval of the Neighborhood Housing Trust, to create or contribute to the creation of low and moderate income housing in the City by making the housing contribution in a single installment in an amount equal to its Net Present Value. The developer will also make a Jobs Contribution Grant of approximately \$60,143, by either a Jobs Contribution Payment or a Jobs Creation Contribution, to be used for the creation of a jobs training program for workers who may be employed, on a permanent basis, at the project.

Development Review Requirements - Article 31

The Project is subject to the development review requirements of Article 31. The developer commenced the review process on June 10, 1988 with the filing of a Project Notification Form. The BRA issued a Scoping Determination on August 12, 1988. A Draft Project Impact Report was submitted December 19, 1988 to which the BRA responded with a Preliminary Adequacy Determination on March 30, 1989. The developer submitted the Final Project Impact Report (FPIR) on May 15, 1989 and it is requested herein that the Authority authorize the Director to issue the Adequacy Determination upon completion of the review by the Authority of such FPIR.

Barrier-Free Access - Article 30

Article 30 incorporates into the Code by reference all of the regulations of the Architectural Access Board (AAB) appearing at 521 CMR 1.00 et seq. (the Access Code). The Appellant anticipates seeking relief from the AAB from a technical requirement of the Access Code relating to a requirement for multiple accessible toilets in the daycare portion of the Project. Subject to the AAB's grant of relief, same relief will be sought as an exception from Article 30 of the Boston Zoning Code.

Street Discontinuances and Acquisition

In order to construct the Proposed Project, both the underground portion of the garage and the building's foundations must extend under adjacent streets. Therefore, the following property rights must be acquired from the City of Boston:

1. Discontinuance by the Public Improvements Commission of the public way in portions of Province Street, Bosworth Street and Chapmen Place (1) beneath such public ways in which portions of the parking garage would be located; and (2) above such public ways in which portions of certain oriels, cornices, and similar architectural features will be located;
2. The acquisition from the City of Boston of fee title to the portions of Chapman Place and Bosworth Street owned by the City of Boston to be occupied by the parking garage for the Proposed Project.

In addition, the following property rights must be acquired from private entities:

- o The acquisition from the owner of the Marliave Restaurant of an easement in those portions of Bosworth Street owned by the Marliave to authorize the construction and maintenance by the Applicant of certain utility lines and of an urban park in that portion of Bosworth Street lying between Chapman Place and Province Street which is a private way open to public use; and
- o The acquisition from the owner of the Parker House Hotel of fee title to those portions of Chapman Place owned by the Parker House in which portion of the parking garage will be located.

Exhibit A to the DIP Agreement contains a legal description of the project site as well as an approximate plan of areas in which a discontinuance or acquisition will be sought from the Public Improvements Commission or relevant private entities. The developer has met twice with the Transportation Liaison Committee which advises the PIC on such matters. In addition, a letter of support is attached from the owner of the Marliave Restaurant.

Final project approval would be contingent upon the issuance of the Adequacy Determination, the execution of any Cooperation Agreements pursuant to Article 31, the Boston Transportation

Department's certification that a Transportation Access Plan Agreement has been executed, and the Office of Jobs and Community Services' certification of compliance with requirements regarding a Boston Resident Construction Employment Plan, and a Memorandum of Understanding and First Source Agreement for the Voluntary Employment Plan.

We therefore recommend that the Authority approve the attached Development Impact Project Plan and authorize the Director to execute the Development Impact Project Agreement as requested by the Appellant.

Appropriate Votes Follow:

VOTED That in connection with the Development Impact Project Plan for 45 Province Street in the Midtown Cultural District area of Boston, presented at a public hearing duly held at the office of the Authority on May 25, 1989, and after consideration of the evidence presented at that hearing, the Boston Redevelopment Authority finds that said Plan: (1) conforms to the general plan for the City of Boston as a whole, (2) contains nothing that will be injurious to the neighborhood or otherwise detrimental to the public welfare, and (3) does adequately and sufficiently satisfy all other criteria and specifications for a Development Impact Project Plan as set forth in Articles 26A and 26B of the Boston Zoning Code as amended; and further

VOTED: That pursuant to the provisions of Article 26A and 26B of the Boston Zoning Code as amended, the Boston Redevelopment Authority hereby approves the Development Impact Project Plan for 45 Province Street. Said Development Plan is embodied in a written document entitled "Development Impact Project Plan for 45 Province Street" dated May 25, 1989, and in a series of schematic drawings listed in Exhibit B-2 of said document; said document and plans shall be on file in the offices of the Authority; and further

VOTED: That the Authority hereby authorizes the Director (1) to execute, in the name and on behalf of the Authority, (a) a Development Impact Project Agreement, in substantially the form attached hereto, and (b) other necessary agreements, with the developer of 45 Province Street; (2) to certify in the name of the Authority,

(a) that plans submitted to the Inspectional Services Commissioner in connection with said project are in conformity with said Development Impact Project Plan; and (b) that the developer has entered into the Development Impact Project Agreement with the Authority to be responsible for the Housing Contribution and the Jobs Contribution Grant; and (3) to approve such changes to the 45 Province Street Project Development Impact Project Plan as are determined by the Director to be necessary to mitigate the adverse impacts, if any, of the 45 Province Street Project identified in the review of the Final Project Impact Report for such Project, and to execute in the name and on behalf of the Authority such amendments to the Development Impact Project Agreement as may be necessary to reflect such amended Plan; and further

VOTED: That in reference to the petition to be brought to the Board of Appeal by Robert Epstein, David Epstein, and John R. Svenson as Trustees of the Province Street Development Trust for exceptions and conditional use, as listed in the Development Impact Project Plan for 45 Province Street, Boston which is approved by the Boston Redevelopment Authority today, the Authority recommends approval with the following provisos: (1) that the Authority and the developer have entered into a Development Impact Project Agreement as required by Articles 26A and 26B; and (2) that plans are submitted to the Authority for design review approval to ensure that the plans are consistent with the plans previously reviewed by the Authority and with the Development Impact Project Plan, provided that final design review approval shall not be granted prior to the execution of a Transportation Access Plan Agreement and other necessary agreements with the Boston Transportation Department, and a Boston Resident Construction Employment Plan, a Memorandum of Understanding, a First Source Agreement, and other necessary agreements with the Mayor's Office of Jobs and Community Services. The Authority authorizes the Director to certify to the Board of Appeal that the petitions and the requested conditional use permit are in conformity with said Development Plan; and (3) that with respect to the recommendation for approval regarding Section 38-8, such recommendation is valid only upon four-fifths majority vote of the Authority.

VOTED: That in connection with the exceptions requested by Robert Epstein, David Epstein, and John R. Svenson as Trustees of the Province Street Development Trust for building height and FAR in excess of but in substantial accord with as-of-right building height and FAR pursuant to Section 38-7 of the code, the Boston Redevelopment Authority finds that (a) such exceptions (i) are related to variations in the ground level of the lot; (ii) are in furtherance of the creation or protection of significant historical or architectural features, including but not limited to decorative cornices, ornamental features, and the like; and (iii) are related to the unique characteristics of the lot and not the Midtown Cultural District as a whole; (b) the proposed height and FAR are substantially in accord with the as-of-right building height and FAR established in Section 38-7; (c) the Proposed Project and its height and massing are compatible with the surrounding area in accordance with the urban design provisions of Section 31-8; (d) such exceptions are consistent with the Midtown Cultural District Plan and the general plan for the City as a whole; (e) such exceptions are in harmony with the general purpose and intent of the code; and (f) the Appellant, upon approval of the Development Impact Project Plan submitted to the Authority today and execution of a Development Impact Project Agreement, will have complied with the Development Impact Project Requirements set forth in Section 26A-3 and 26B-3 of the Code.

VOTED: That in connection with the exception requested by Robert Epstein, David Epstein, and John R. Svenson as Trustees of the Province Street Development Trust to the maximum as-of-right FAR pursuant to Section 38-8 of the Code, the Boston Redevelopment Authority finds (a) the Proposed Project and its massing are architecturally compatible with the surrounding area, in accordance with the urban design provision of Section 38-8; (b) such an exception is in harmony with the general purpose and intent of the code; (c) the Proposed Project is consistent with the Midtown Cultural District Plan and the general plan for the city as a whole; and (d) the Appellant, upon approval of the Development Impact Project Plan submitted to the Authority today and execution of a Development Impact Project Agreement will have complied with the

Development Impact Project Requirements set forth in
Section 26A-3 and in Section 26B-3.

VOTED: That the Director be authorized to certify to the
Commissioner of Inspectional Services that the Proposed
Project complies with applicable provisions of Articles
26A, 26B, 28, 31, and 38 within 30 days of receipt of
one copy of each plan, drawing or specifications filed
with the Commissioner in connection with a building
permit application filed on the Proposed Project;
provided that prior to such certification the Authority
shall have received a report from each of the
geotechnical engineer and the structural engineer for
the Project, stamped in each case by a registered
Massachusetts professional engineer, indicating that in
their professional opinion the design and method of
construction of the slurry wall for the Project will
not have an adverse impact upon the structural
integrity of abutting buildings.

VOTED: That the Authority hereby authorizes the Director to
execute, in the name and on behalf of the Authority, an
Adequacy Determination with respect to the Final
Project Impact Report for the 45 Province Street
Project, upon completion of the review by the Authority
of such Final Project Impact Report for 45 Province
Street pursuant to Section 31-5.6 of the Code.

**45 PROVINCE STREET
FACT SHEET**

DEVELOPMENT TEAM

Developer:	The Abbey Group
Architect:	Brunner/Cott & Associates
Counsel:	McCormack & Putziger

PARCEL DESCRIPTION

Address:	5-47 Province Street
Location:	Bounded by Chapman Place on the northwest, Bosworth Street on the southwest, Province Street, on the southeast, and the Parker House Office Building on the northeast. The site is presently occupied by a mechanical parking garage, a surface parking lot, a small bar, and a convenience store.
Size:	13,881 square feet

PROPOSAL

Height:	162 feet (13 stories) to the last occupied floor
Program:	
Office:	148,289 GSF
Retail/	
Restaurant:	11,854 GSF
Daycare:	4,000 GSF
Parking:	440 spaces in a seven-level below grade garage
FAR:	11.8
Site SF:	13,881

FINANCING

Estimated total development cost: \$66 million

SCHEDULE

Estimated Start of Construction: 4th quarter 1989
Estimated Completion: 4th quarter 1991

BENEFITS

Annual taxes:	\$800,000
Employment:	

Construction Jobs: 75 average; 200 peak
Permanent Jobs: 684

Housing linkage: \$300,715
Jobs linkage: \$ 60,143

Cultural Benefits:

1. Artist to be part of design team to explore opportunities for artistic expression within the new Province House Park
2. \$25,000 design competition for an interpretative commemoration of the Province House steps
3. Installation of art within the public spaces in the Building

Public Improvements:

Restoration of the historic Province House steps and creation of a park at the crown of the steps with seasonal plantings; new lighting, paving, and trash receptacles on adjacent sidewalks.

§ 40J. Disclosure statements of persons having beneficial interest in real property

No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the deputy commissioner of capital planning and operation. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation.

A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital planning and operations disclosing beneficial interest in real property pursuant to this section, shall identify his/her position as part of the disclosure statement. The deputy commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.

The deputy commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.

Added by St.1980, c. 579, § 12.

1980 Enactment. St.1980, c. 579, § 12, was approved July 16, 1980, and by § 66 made effective July 1, 1981.

See also, note under § 39A of this chapter.

Library References

States — 39.

C.J.S. §§ 145, 149, 150.



Location Plan

No. 45 Province Street
Boston
Massachusetts

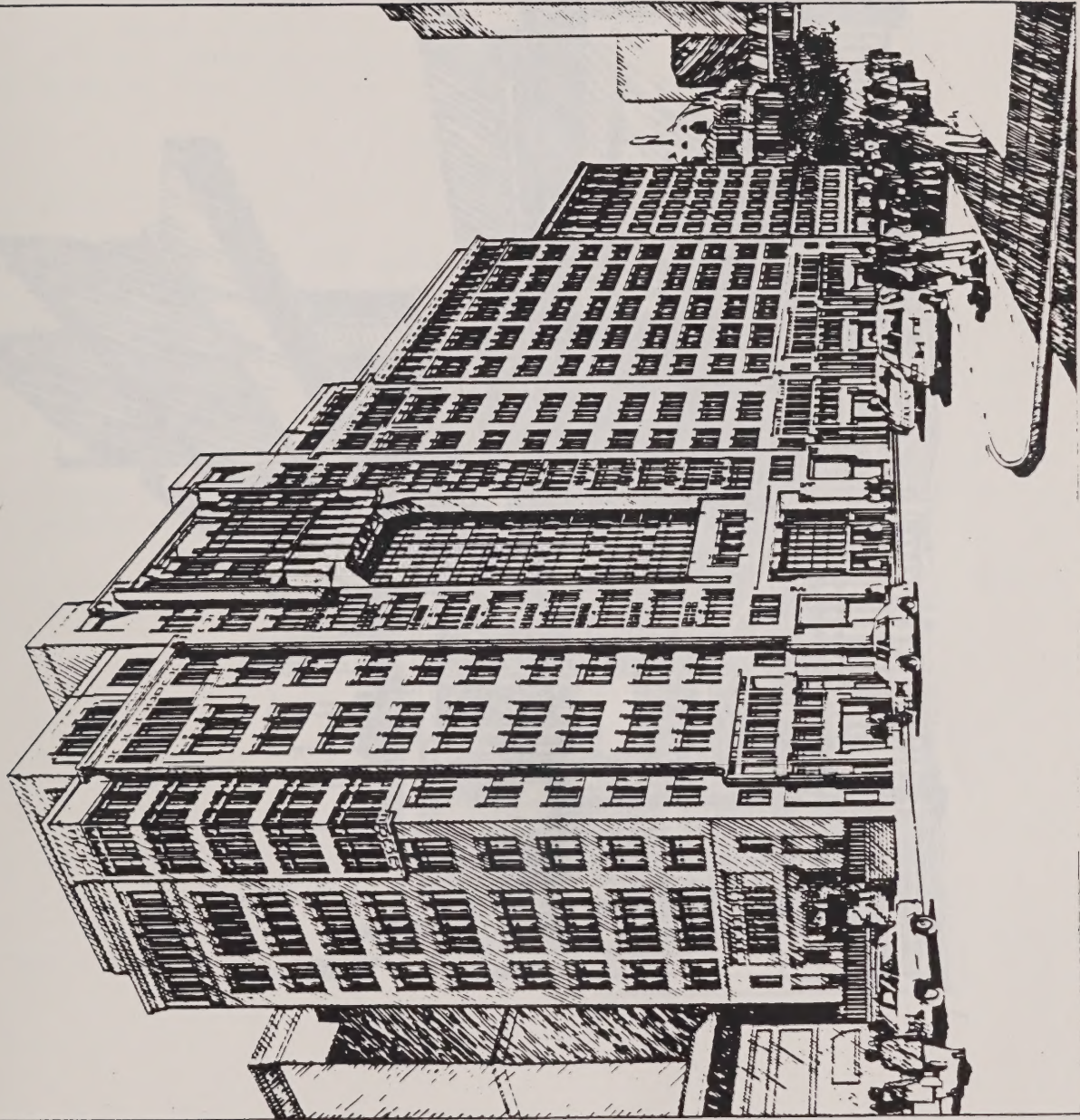
The Abbey Group

375 Bayview Street
Boston, Massachusetts 02116
(617) 267-1000

luner/Cott

1. Visual Street
2. Landscape
3. Urban Design
4. Interior Design
5. Planning

375 Bayview Street
Boston, Massachusetts 02116
(617) 267-1000



View from south

No. 45 Province Street
Boston
Massachusetts

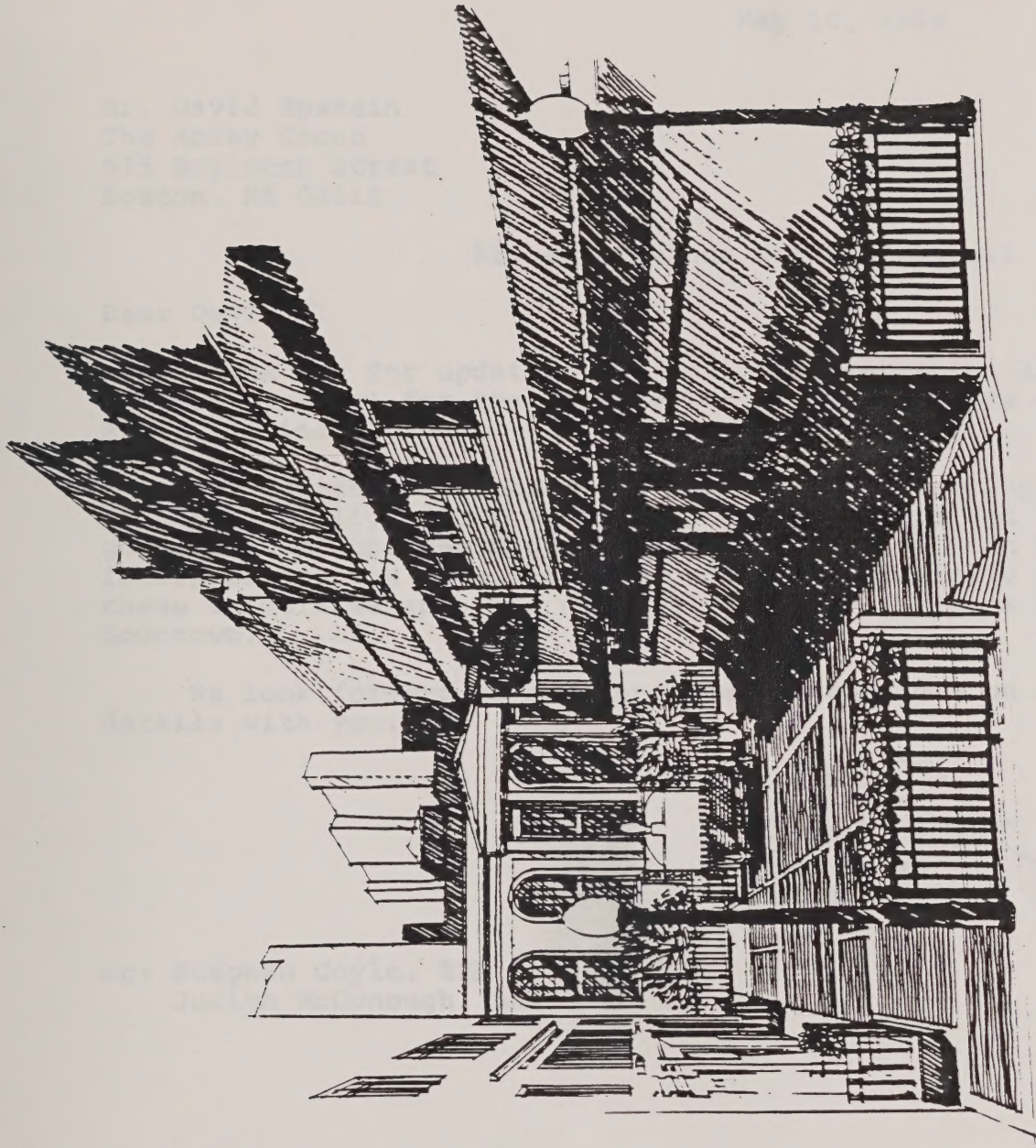
The Abbey Group

45 Province Street
Boston, Massachusetts 02116
617-566-9666

Robert C. Cott

Robert C. Cott
Architect
192 Bond

Architect Urban Design
Urban/Space Planning



View of Park from Bosworth Street

No. 45 Province Street
Boston
Massachusetts

The Abbey Group

575 Boylston Street
Boston, Mass. 02116
(617) 266-8860

Unit/Cat

575 Boylston Street
Boston, Mass. 02116
(617) 266-8860

BOSTON PRESERVATION ALLIANCE

May 10, 1989

Mr. David Epstein
The Abbey Group
575 Boylston Street
Boston, MA 02116

RE: 45 Province Street Proposal

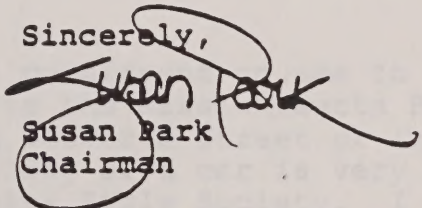
Dear David:

Thank you for updating the Boston Preservation Alliance on your proposal for the parking lot and garage site located at 45 Province Street.

The Alliance supports your proposal to redevelop this site enthusiastically. As I mentioned, we have supported the guidelines of the new Midtown Cultural District Plan which incorporates this site. Your proposal substantially meets these guidelines and will certainly enhance Boston's historic downtown.

We look forward to our continued discussions on design details with you.

Sincerely,



Susan Park
Chairman

cc: Stephen Coyle, BRA
Judith McDonough, BLC

Massachusetts Bible Society

Founded 1809

41 Bromfield Street/Boston, MA 02108/Telephone: (617) 542-2230

Donald A. Wells, Ph.D., Executive Director

November 16, 1988

Mr. David Epstein
Senior Vice President
The Abbey Group
575 Boylston Street
Boston, MA 02116

Dear Mr. Epstein:

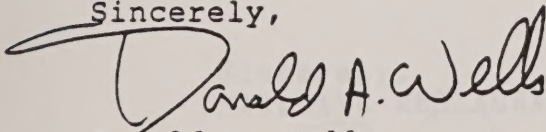
Thank you very much for taking time last Thursday, Nov. 10th, to update me on the plans of The Abbey Group to build an office building with street-level retail and underground parking facilities on the site of the old Province Street parking garage. It was exciting to hear of your plans and of the new vitality those plans will bring to our area.

It is my understanding that those plans will have minimal or no impact upon the property of the Massachusetts Bible Society whose back entrance is on Bosworth Street. We would appreciate, however, you keeping us informed as the project goes forward. Particularly, we would be interested in seeing any forthcoming impact study that you will prepare.

Thank you very much for your verbal commitment to see to it that the one parking space that belongs to the Massachusetts Bible Society will be cared for either on Bosworth Street or in your new parking facility. The availability of a car is very important in my work with the Massachusetts Bible Society. I am most pleased for your sensitivity in that regard.

Again, best wishes as your project moves toward its starting date. We certainly welcome you to our special area in downtown Boston.

Sincerely,



Donald A. Wells
Executive Director

DAW:hjr

Cafe Marliave

AT YE OLD PROVINCE STEPS
ON THE FREEDOM TRAIL
BOSTON, MASS.



EST. 1875

10 BOSWORTH STREET

BOSTON, MASS. 02108

ROY ROSSETTI

TELEPHONE
423-6340



January 3, 1989

Mr. David Epstein
Abbey Group
575 Boylston Street
Boston, Mass. 02116

Dear Sir:

After having met with you on several occasions and examining the well detailed plan for the proposed Province Street garage project, I feel that the project will not only increase land value, but also will promote business activity as well as beautify the area.

Of course the project will entail some hardships for the abutters, mainly traffic congestion, noise, dust, dirt, but I believe that if we work together these can possibly be minimized.

Sincerely,
MARLIAVE RESTAURANT INC.

RR:lp

ST JAMES PROPERTIES

May 24, 1989

Mr. Clarence J. Jones, Chairman
Mr. Stephen Coyle, Director
Board of Directors
Boston Redevelopment Authority
One City Hall Plaza
Boston, MA 02201

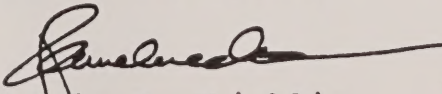
Dear Messrs. Jones and Coyle and Board Members:

On behalf of St. James Properties and 90 Tremont Street Associates Limited Partnership, I would like to express our support for The Abbey Group's proposed No. 45 Province Street project. This new addition to Province Street will accelerate the important revitalization efforts which have begun in this northernmost section of the Midtown Cultural District.

We believe that the architects for the project, Bruner/Cott & Associates, have created an exceptionally high quality composition of contextual scale and detail in their designs for No. 45 Province Street. The Abbey Group's new building will also improve a major portion of Province Street which is currently marred by an outdated parking garage and surface lot. In addition, the planned restoration of the Province House Steps and the creation of a small park at the end of Bosworth Street will help upgrade the area and encourage increased pedestrian activity which will benefit all of the local businesses.

As owners and developers of the Tremont Temple/90 Tremont Street project, we look forward to joining The Abbey Group in contributing to the increasing momentum of the Midtown Cultural District Plan. We believe that the synergy which will be created by the several new projects in this area of Midtown will benefit the City as a whole.

Very truly yours,


Pamela C. Chicklis
Vice President

bcc: Mr. David Epstein
Mr. William Whitney
Ms. Nancy Tentindov ✓

Salvatore J. LaGrassa

Food Service • Real Estate

16 Mohawk Street • Danvers, Massachusetts 01923

R.F.E. MANAGEMENT INC.

16 MOHAWK STREET
DANVERS, MA 01923
(617) 733-0610

May 23, 1989

Mr. Stephen Coyle, BRA
Boston City Hall
Boston, MA. 02108

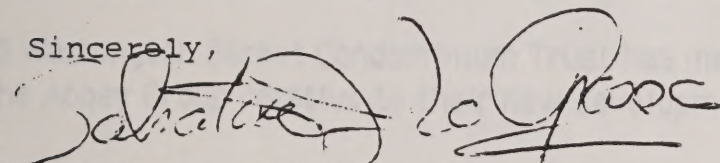
Dear Mr Coyle:

RE: 45 Province St. Proposal

I have met with David Epstein of the Abby Group several times regarding the building for 45 Province St.

I am very excited about the project and feel it will add new vitality to a forgotten street that is deep in Boston history.

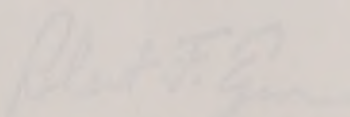
Sincerely,



Salvatore LaGrassa
Governors Alley Rest. & Bar
23-29 Bromfield St.

SLG:lp

Thank you,



Robert F. Epstein, Managing Agent
R.F.E. MANAGEMENT CORP.

R.F.E. MANAGEMENT INC.

131 HARVARD STREET
BROOKLINE, MA 02146
(617) 739-0011

Boston Redevelopment Authority
Nancy Tentindo
City Hall Plaza
Boston, MA 02108

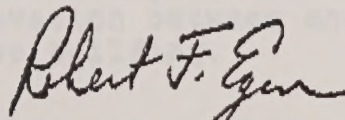
May 25, 1989

Dear Ms. Tentindo,

333 Washington Street Condominium Trust has met on many occasions with the Abbey Group relative to their new development at 45 Province Street.

As abbuters, we are currently satisfied with the developer's proposed plans and appreciate the cooperation of Mr. David Epstein and the Abbey Group. If you have any questions please call me at 739-0610.

Thank you,



Robert F. Egan, Managing Agent
R. F. E. Management Corp.

Meredith & Grew, Incorporated

160 Federal Street
Boston, Massachusetts 02110-1701

(617) 330-8000
Telecopier (617) 330-8190

May 25, 1989

Mr. Stephen Coyle
Director
Boston Redevelopment
Authority
One City Hall Square
Boston, MA 02201

Dear Steve:

As we have discussed, Meredith & Grew is the agent for the OMNI/Parker House with respect to the proposed redevelopment of the Parker House, as well as any business discussions with abutters.

The purpose of this correspondence is to clarify our relationship with David Epstein and the proposed 45 Province Street project. David has attempted to initiate discussions with us over the past few months, and with OMNI representatives prior to that. As you know, OMNI has financial partners in this project and has felt obliged to refine basic redevelopment concepts for the Parker House prior to discussing long-term legal and financial relationships with abutters.

We have only recently begun to discuss specific design, geotechnical, construction methods, property damage, and service issues. You can appreciate that we are concerned about the construction impact on a going concern, namely, the Parker House hotel. Further, we are naturally concerned about a seven-level parking garage excavation between one foot and three feet from the Parker House building.

(More)

Meredith & Grew, Incorporated

Letter - Stephen Coyle, Director, BRA

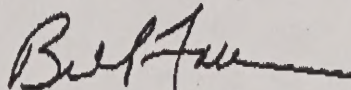
May 25, 1989

Page 2

Having said this, our discussions with David have been professional and forthright. We are working together in good faith to come to agreement on design, financial and business issues. Therefore, we are not in a position to either support or oppose our neighbor's project and certainly would hope to support their project as soon as it is practical to do so. We also anticipate that they would suggest ours. If you do feel obliged to process the approval of their project at this time, we would hope you do so on a conditional basis, subject to agreement with abutters and the Parker House specifically.

Again, we are all working as cordially and as efficiently as possible. Thank you for your consideration.

Sincerely,



Brian L.P. Fallon
Senior Vice President

BLPF:vad

cc: Clarence Jones
Paul McGaunn
William Sheehan
~~David...~~